

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PACO SALDANA,

No. C 10-05011 CW (PR)

Petitioner,

ORDER DISMISSING PETITION FOR A  
WRIT OF HABEAS CORPUS AND  
DENYING CERTIFICATE OF  
APPEALABILITY

v.

BEN CURRY, Warden,

Respondent.

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Petitioner, a state prisoner, filed this pro se habeas corpus action challenging as a violation of his constitutional rights the denial of parole by the California Board of Parole Hearings (Board) on February 24, 2009. Thereafter, the Court dismissed the action for failure to pay the filing fee, but subsequently reopened the action when the fee was paid. The Court now reviews the allegations in the petition to determine whether a cognizable claim for federal habeas corpus relief is presented.

Petitioner maintains that the Board's finding that he was not suitable for parole violated his right to due process because that finding was not supported by "some evidence" that Petitioner poses a current danger to society if released.

A "federal court may issue a writ of habeas corpus to a state prisoner 'only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.'" Swarthout v. Cooke, 131 S. Ct. 859, 861 (2011) (internal citation omitted). The court may not grant habeas relief for state law

1 errors. Id.

2 In Cooke, the Supreme Court explained that earlier Supreme  
3 Court cases had determined that the procedural protections to which  
4 a parole applicant is entitled under the Due Process Clause of the  
5 Fourteenth Amendment are "minimal." Id. at 862. In particular,  
6 the Supreme Court had "found that a prisoner subject to a parole  
7 statute similar to California's received adequate process when he  
8 was allowed an opportunity to be heard and was provided a statement  
9 of the reasons why parole was denied." Id. at 862 (citing  
10 Greenholtz v. Inmates of Nebraska Penal & Corr. Complex, 442 U.S.  
11 1, 16 (1979)). Thus, as long as a petitioner receives at least  
12 that much process at a parole hearing, the federal court's habeas  
13 review is at an end. See Cooke, 131 S. Ct. at 862.

14 Further, Cooke made clear that no Supreme Court case "supports  
15 converting California's 'some evidence' rule into a substantive  
16 federal requirement." Id. at 861. Therefore, the federal courts  
17 have no authority in habeas to determine whether California's "some  
18 evidence" rule was correctly applied. Id. at 863. Consequently,  
19 if an inmate seeking parole "receives an opportunity to be heard, a  
20 notification of the reasons as to denial of parole, and access to  
21 [his] records in advance," then there is no due process violation  
22 stemming from a claim that a parole denial did not comply with  
23 California's "some evidence" rule of judicial review. Pearson v.  
24 Muntz, 639 F.3d 1185, 1191 (9th Cir. 2011).

25 Here, as noted, Petitioner claims the Board's denial of parole  
26 violated his right to due process because there was not "some  
27 evidence" to find that Petitioner poses a current danger to society  
28 if released. In light of the Supreme Court's determination that


1 the constitutionally-mandated procedural protections for which  
2 federal habeas relief is available do not include a requirement  
3 that there be some evidence (or any other amount of evidence) to  
4 support the parole denial, the petition for a writ of habeas corpus  
5 is DISMISSED for failure to state a cognizable claim for federal  
6 habeas corpus relief.

7 A certificate of appealability will not issue because  
8 Petitioner has not made "a substantial showing of the denial of a  
9 constitutional right." 28 U.S.C. § 2253(c)(2). This is not a case  
10 in which "reasonable jurists would find the district court's  
11 assessment of the constitutional claims debatable or wrong." Slack  
12 v. McDaniel, 529 U.S. 473, 484 (2000). Petitioner may, however,  
13 seek a certificate of appealability from the Ninth Circuit Court of  
14 Appeals.

15 The Clerk of the Court shall enter judgment, terminate all  
16 pending motions and close the file.

17 IT IS SO ORDERED.

18 Dated: 1/6/2012

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20 CLAUDIA WILKEN  
21 UNITED STATES DISTRICT JUDGE  
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